



Commonwealth of Massachusetts State Ethics Commission

One Ashburton Place, Room 619, Boston, MA, 02108
phone: 617-727-0060, fax: 617-723-5851



SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 469

IN THE MATTER OF LEONARD MACH

DISPOSITION AGREEMENT

This Disposition Agreement (Agreement) is entered into between the State Ethics Commission (Commission) and Leonard Mach (Mach) pursuant to §5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On November 5, 1992, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Mach. The Commission has concluded its inquiry and, on April 27, 1993, found reasonable cause to believe that Mach violated G.L. c. 268A.

The Commission and Mach now agree to the following findings of fact and conclusions of law:

1. Mach was, during the time relevant, the Massachusetts Treatment Center at Bridgewater (MTCB) Acting Administrator. He served in that position from February 1991 to February 1992. As such, Mach was a state employee as that term is defined in G.L. c. 268A, §1.

2. Mach's son, Gary Mach (Gary), became employed at MTCB as a Mental Health Case Worker in 1987. (The Commission knows of no evidence indicating Mach played a role in the hiring of his son.)

3. In February 1991, Mach was appointed MTCB Acting Administrator. As such, Mach became Gary's appointing authority.

4. In October 1991, the Department of Personnel Administration (DPA) authorized MTCB to certify two Mental Health Case Worker positions as temporary certified civil employee positions.^{1/} Gary was only a provisional civil service employee at the time. Therefore, he was interested in obtaining one of these appointments.

5. A Selection Committee (Committee) interviewed each applicant and then recommended Gary and another candidate for the appointments. In doing so, the Committee found that the other six candidates for the position, all of whom had obtained higher scores on the DPA exam than Gary, failed to meet the requirements for the appointment.

6. After receiving the recommendations from the Committee, Mach signed the Entrance Requirement Verification Forms indicating that all the candidates, with the exception of his son and the other candidate recommended for the appointments by the Committee, failed to meet the entrance requirements. Additionally, Mach also signed (as the appointing authority) civil service forms indicating Gary and the other candidate recommended by the Committee were selected for the Mental Health Case Worker appointments.

7. Mach did not inform his appointing authority that he would be signing these documents concerning his son's appointment.

8. Section 6 of G.L. c. 268A, except as otherwise permitted in that section,^{2/} provides in relevant part that a state employee is prohibited from participating as such an employee in a particular matter in which he knows his

immediate family^{3/} has a financial interest.^{4/}

9. The documents Mach signed associated with his son's appointment involved determinations which were particular matters.^{5/}

10. Because Mach signed these documents as his son's appointing authority, he participated^{6/} in these particular matters.

11. Mach knew that his son had a financial interest in obtaining the appointment because he knew when he signed the above forms, that his son was likely to be laid off if he did not receive certified temporary employee status.

12. Therefore, by participating in the appointment process as described above, Mach participated in particular matters in which to his knowledge his son had a financial interest, thereby violating G.L. c. 268A, §6.^{7/}

In view of the foregoing violations of G.L. c. 268A by Mach, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Mach:

(1) that Mach pay to the Commission the sum of five hundred dollars (\$500) as a civil penalty for violating G.L. c. 268A, §6;^{8/} and

(2) that Mach waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

Date: June 30, 1993

^{1/} There are three different types of employees: (1) permanent civil service employees; (2) temporary certified civil employees; and (3) provisional employees. A provisional employee has less seniority than a temporary certified civil service employee, and would be released earlier if layoffs occurred.

^{2/} None of the exceptions applies here.

^{3/} "Immediate family," the employee and his spouse, and their parents, children, brothers and sisters. G.L. c. 268A, §1(e).

^{4/} Section 6 goes on to state that a state employee, whose duties would otherwise require him to participate in such a particular matter, must advise the official responsible for his appointment (the appointing official) and the Commission in writing of the nature and circumstances of the particular matter and fully disclose the financial interest. Pursuant to §6, the appointing official is, upon receipt of the employee's written disclosure, required to either assign the matter to another employee, assume responsibility for the matter himself, or make a written determination that the financial interest in issue is not so substantial as to be deemed likely to affect the integrity of the services which the Commonwealth may expect from the employee, in which case the employee is permitted to participate in the matter. A copy of the appointing official's determination must be filed with the Commission by the appointing official, who must also forward a copy of the determination to the disclosing employee.

^{5/} "Particular matter," any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, §1(k).

^{6/} "Participate," participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. G.L. c. 268A, §1(j).

^{7/} It could be argued that Mach's participation was relatively ministerial in that he was only, in effect, rubber-stamping decisions made by the Committee. In fact, however, the DPA would not have accepted the job status changes without Mach's signature. Therefore, his was a substantive, and not just a reporting role. See, e.g., *In re Muir*, 1987 SEC 301 (state employee who participates in son's promotion by signing off and forwarding along the chain of command a recommendation made by subordinates violated §6).

^{8/} While the Commission can impose up to a \$2,000 fine for each violation of §6, it has determined that a small fine here properly reflects the mitigating factors. Thus: Mach appears to have tried to distance himself from the decision-making process when his son was involved,

the Committee made the key appointment decisions, and there is no evidence that Mach attempted to influence the Committee's decision-making process. That it has insisted on a public resolution and fine reflects the emphasis the Commission places on proper compliance with §6's disclosure and exemption provisions. These provisions are more than mere technicalities. They protect the public interest from potentially serious harm. The steps of the disclosure and exemption procedure — particularly that the determination be in writing and a copy filed with the Commission — are designed to prevent an appointing authority from making an uninformed, ill-advised or badly motivated decision. See *In re Muir*, supra at 302.